

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CHRISTOPHER WOZNIAK,

Plaintiff,

v.

WARNER BROS. ENTERTAINMENT INC.,

Defendant.

DC COMICS,

Third-Party Plaintiff,

v.

CHRISTOPHER WOZNIAK,

Third-Party Defendant.

Case No. 1:22-cv-08969-PAE

**DECLARATION OF R. TERRY PARKER
IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT FILED BY
WARNER BROS. MEDIA'S MOTION FOR SUMMARY JUDGMENT**

I, R. Terry Parker, declare as follows:

1. I am the attorney for the plaintiff and third-party defendant Christopher Wozniak (“Wozniak”), in the above-captioned action.
2. I submit this declaration in opposition to the motion to for summary judgment filed by the defendant Warner Bros. Entertainment Inc. and third-party plaintiff DC Comics.
3. Attached hereto as Exhibit A is a copy of excepts from the transcript of the deposition of a 30(b)(6) witness for DC Comics, Paul Levitz, taken July 17, 2023.
4. Attached hereto as Exhibit B is a copy of excepts from the transcript of the

deposition of a third-party witness, Chuck Dixon, taken September 1, 2023.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.

Executed on this 5th day of November, 2023.

/s/ R. Terry Parker

R. Terry Parker

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2023, I caused a copy of the foregoing to be filed via ECF by which all counsel of record for the parties are served.

/s/ R. Terry Parker
R. Terry Parker

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
CHRISTOPHER WOZNIAK,

Plaintiff,
v.

WARNER BROS. ENTERTAINMENT, INC.,

Defendants.

Civil Action No. 22-cv-08969 (PAE)

-----x
DC COMICS,

Third-Party Plaintiff,

v.

CHRISTOPHER WOZNIAK,

Third-Party Defendant.

-----x
July 17, 2023
10:00 a.m.

EXAMINATION of Paul Levitz, pursuant to
Subpoena, held at the above time and place
before Larin Kaywood, a Notary Public within and
for the State of New York.

Page 2

Page 3

1
2 APP E A R A N C E S:
34 R. TERRY PARKER LAW
5 Attorneys for Plaintiff
6 43 West 43rd Street, Suite 275
7 New York, New York 10036
8 BY: TERRY PARKER, ESQ.
9 EMAIL: TERRY@RTERRYPARKERLAW.COM10 FROSS, ZELNICK, LEHRMAN, & ZISSU, PC.
11 Attorneys for Defendant
12 151 W 42nd Street
13 17th Fl
14 New York, New York 10036
15 BY: JAMES WEINBERGER, ESQ.
16 ANDREW NIETES, ESQ.
17 Email: JWEINBERGER@FZLZ.COM

18 * * *

1

2 S T I P U L A T I O N S
34 IT IS HEREBY STIPULATED AND AGREED by and
5 between the attorneys for the respective parties
6 herein, that filing, sealing and certification,
7 and the same are, hereby waived.8 IT IS FURTHER STIPULATED AND AGREED that all
9 objections except as to the form of the
10 question, shall be reserved to the time of the
11 trial.12 IT IS FURTHER STIPULATED AND AGREED that the
13 within deposition may be signed and sworn to by
14 an officer authorized to administer an oath,
15 with the same force and effect as if signed and
16 sworn to before the Court.

17 * * *

25

1
2 Paul Levitz
3 P A U L L E V I T Z, the witness herein,
4 having been first duly sworn by a Notary Public
5 in and of the State of New York, was examined
6 and testified as follows:

7 EXAMINATION BY

8 MR. PARKER:

9 Q. Would you please state your full
10 name for the record?

11 A. Paul Levitz.

12 Q. What is your current address?

13 A. 7 Deforest Drive, Cortlandt Manor,
14 New York 10567.

15 Q. Good morning, Mr. Levitz.

16 A. Good morning.

17 Q. My name is Terry Parker. I
18 represent the third-party defendants. You have
19 already entered your name into the record, so
20 I'll scratch that question off of my list.

21 Have you ever been deposed before?

22 A. Many times.

23 Q. Good. So you probably know some of
24 the basic rules and so I'll go through them any
way. This is a question and answer format.1
2 Paul Levitz
34 I'll be asking you some questions; and the court
5 reporter will be writing those questions and you
6 will be answering those questions to the best of
7 your ability.8 She will be creating a transcript
9 that will show my question and your attorney
10 your attorney may object from time to time
11 unless they instruct you not too; is that
12 understood?

13 A. Yes.

14 Q. In order for us to have a clean
15 record for the questions and answer. I need you
16 to answer verbally, if you nod your head or say
17 yes, or you articulate it in some fashion, that
18 doesn't get captured by the reporter.19 Please wait until I finish the
20 question before you begin the answer, we don't
21 want an over lap of us speaking at the same time
22 that makes it a nightmare for the reporter; is
23 that understood?

24 A. Yes.

25 Q. If you need a break at any time, let
me know as long as there is no question pending

<p>1 2 Paul Levitz 3 A. No. 4 Q. We'll I'll represent to you this is 5 what we call a Notice of Deposition. 6 And this is kind of a formal 7 mechanism by which I tell your counsel that we 8 are going to have the deposition today and in 9 this deposition notice there is a list of 10 definitions, and then there are a list of 11 topics? 12 A. Yes. 13 Q. It's my understanding that you're 14 here today to testify as to the DC acquisitions 15 of the copyrights of the Batman copyright of 16 material; is that accurate? 17 A. I believe that is one of the things 18 that they suggested that I was here for. 19 MR. WEINBERGER: I can confirm that. 20 Q. And you are here to testify as DC 21 come imagines acquisitions of the copyrights of 22 the Batman characters; is that right? 23 MR. WEINBERGER: I can confirm that 24 for the witness. 25 Q. And you are here to discuss topics</p>	<p>1 2 Paul Levitz 3 of one and two, and they are also you are here 4 to testify the topic number nine that is DC 5 Comics policies and procedures for accepting 6 proposed material from freelance writers from 7 January 1st, 1990 to January of 2003. 8 MR. WEINBERGER: I confirm that, I 9 would like to note for the record DC perspective 10 I don't think you mentioned topic three, he is 11 testifying on the companies behalf on one two 12 three and nine in the notice. 13 But with respect to topics, one 14 through three, I understand that you're using 15 defined terms to delineate between them but from 16 DC's perspective they are all one in the same. 17 I don't know if there is any need to 18 differentiate between topics one, two and three. 19 MR. PARKER: I want to go over those 20 defined terms so that we know what we are 21 talking about so that we something that is 22 specific and understood. 23 I'm going to get rid of this. Let's 24 move up and look at the deposition of these 25 terms. Let's refer now to the definition of</p>
<p>1 2 Paul Levitz 3 number five in the first to determined Batman 4 copyrighted material; do you see that? 5 A. Yes. 6 Q. And that is defined meaning words 7 referred to in the third-party complaint by DC 8 Comics at Batman writer material including the 9 words referred to in the third-party complaint. 10 Is that a definition that you 11 understand? 12 A. I have seen the words but I haven't 13 seen the words in the exhibit that you're 14 referring to. 15 MR. WEINBERGER: You can ask a 16 question. 17 Q. Let's stay with the term Batman 18 characters. I'm looking at number six now, the 19 term Batman characters is defined as referenced 20 in the third-party complaint; is it not? 21 A. That is what it says. 22 Q. I think it would help if we pull up 23 the third-party complaint? 24 Mr. Levitz, is this a document that 25 you have seen before?</p>	<p>1 2 Paul Levitz 3 A. No. 4 Q. I'll represent to you that this is 5 the third-party complaint by DC Comics Chris, 6 you are familiar with the lawsuit, or are you 7 not? 8 A. I am mildly familiar with the 9 lawsuit. 10 Q. I'm going to refer us now to 11 paragraph nine. Paragraph nine states certain 12 -- Batman's creation in 1939, certain other 13 related characters and other -- original 14 fanciful elements have appeared in the Batman 15 plotlines, including but not limited to Robin 16 aka Dick Grayson, The Riddler aka Edward Nygma, 17 Commissioner James Gordon, Barbara Gordon aka 18 Batgirl, Two Face, The Joker, Batman's butler 19 Alfred, the Batmobile and the fictional city 20 Gotham City, among many others (together, the 21 "Batman Characters"). So I understand the 22 Batman characters as being defined in this 23 paragraph is this a definition that you 24 understand. 25 Do you understand that?</p>

<p>1 Paul Levitz 2 A. I believe that I understand it. 3 Q. So since Batman's creation in 1939, 4 what is your understanding of that creation? 5 A. I'm sorry. Would you repeat your 6 question? 7 Q. The opening phrase since Batman's 8 creation in 1939? 9 A. Yes. 10 Q. What is your understanding of that 11 phrase "Batman's creation in 1939?" 12 A. I think it's plain English. Phrase 13 that just describes the fact that there is a 14 creative process that resulted in the character; 15 the creative property Batman and the assumption 16 here is that it took place in 1939 and that is 17 probably not entirely accurate. 18 Q. Why do you think it's not entirely 19 accurate? 20 A. If I remember correctly when the detective 21 comic number 27 was first published the process 22 probably began in late 1938. 23 Q. Do you understand the phrase? 24 Do you understand the phrase certain</p>	<p>1 Paul Levitz 2 other related characters and other original 3 fanciful elements? 4 A. I believe it's an attempt to put a 5 definitional term to the fact that there are 6 original creative element within the stories of 7 Batman that are characters or objects that are 8 distinctive and original. 9 Q. Can you identify any fanciful 10 elements that is identified here? 11 A. There is a list in the paragraph 12 that includes a number of characters. I would 13 also say that the batcave, the batman rank, the 14 utility belt, and many other things, and 15 villains that were introduced. 16 Q. Bathound, would that be one? 17 A. That certainly would be. 18 Q. That might? 19 A. Yes. 20 Q. Kathy? 21 A. Yes. 22 Q. Batwoman? 23 A. Yes. 24 Q. Okay. Any other faceable (sic)</p>
<p>1 Paul Levitz 2 element that you can think of? 3 A. We could probably sit here for the 4 next hour trying to remember all of the 5 different elements of the process. If you're 6 talking about the property as it's extended 7 overall of these years. 8 Q. Right now we are just looking at 9 1939? 10 A. 1939, you have Doctor Dead, if your 11 so specific to 1939 most of these elements have 12 not appeared yet, that are a numbered here. 13 Q. Well, was Robin? 14 A. No. 15 Q. Was he created in 1939? 16 A. He may have been created at the very 17 end 1939, but he was not published until 1940. 18 Q. And Miller? 19 A. 1940, somewhere. 20 Q. And Mr. Gordon? 21 A. The original story, and if your 22 defining that as 1939 let's stick with that. 23 Q. Let's go through them one at a time. 24 This term Robin A.K.A Dick Grayson,</p>	<p>1 Paul Levitz 2 what is your understanding of that term? 3 A. The original character as had a 4 secret identity as Dick Grayson. 5 Q. What is the next one Riddler, what 6 is your understanding of that character? 7 A. Dylan who taunted Batman by offering 8 difficult to solve riddles that was accused 9 of the crimes that he was about to commit. 10 Q. And the commission of James Gordon; 11 what is your definition of it? 12 A. Circumstance lying the police force 13 in 1939 and in many Batman stories thereafter. 14 Q. Barbara Gordon, bat girl; what is 15 your understanding of that? 16 A. That character was in 1968 roughly 17 as the daughters of the commission of Gordon, 18 she was the Librarian who sort of had a crush on 19 Batman and took on the identity of bat girl. 20 Q. And the term Joker, two phase, I'm 21 skipping. 22 What is the understanding of the 23 Joker, what is your understanding of that term? 24 A. That was introduced in Batman in</p>

<p>1 2 Paul Levitz 3 1940.</p> <p>4 Q. And Batman, Alfred, where did that 5 come from?</p> <p>6 A. He was introduced in the Batman 7 stories, I believe in 1941, and then 8 significantly modified after the first Batman 9 serial, but normally known Aspen any worth in 10 the William family Butler.</p> <p>11 Q. The term Batman mobile. What is 12 your understanding of the bat mobile?</p> <p>13 A. The distinctive car that the Batman 14 operates which the visual has changed over the 15 years but it always had some level of unique 16 design element that identify it as a bat mobile, 17 either a batt head, hood element or other 18 features like that.</p> <p>19 Q. Any other features?</p> <p>20 A. I'm sorry.</p> <p>21 Q. What other features?</p> <p>22 A. It's very, very much from decade to 23 decade. Distinctive, the tail changed at one 24 point or another, things that are of Batman.</p> <p>25 Q. And I assume that you would</p>	<p>1 2 Paul Levitz 3 understand that the Batman was a Batman 4 character as well that can be added to the -- 5 A. I didn't hear you clearly. 6 Q. Is a Batman, Batman that can be 7 added to this list, in paragraph nine? 8 A. Sure. 9 Q. How would you describe the Batman 10 character? 11 A. The most typical Batman stories. He 12 is a boy named Bruce Wayne, who had seen his 13 parents get murdered when he was a child and has 14 sworn he didn't see the murder by elevating in 15 that City of Gotham; and is inspired by putting 16 on the mask and becoming Batman. 17 Q. And did the Batman character is an 18 original creation? 19 A. As original as anything gets. 20 Q. Who created him? 21 A. The original Batman stories are by 22 Bob Kane and Bill Sienkiewicz. 23 Q. Who is Bob Kane? 24 A. Bob Kane was born Robert Kane in New 25 York City in the early part of the 20th century.</p>
<p>1 2 Paul Levitz 3 I wouldn't remember the date offhand. But I 4 would guess around 1920.</p> <p>5 He was one of the earliest 6 cartoonist in the nations field of comic books 7 in the 1930s. Predominantly a cartoonist.</p> <p>8 He did some work for the DCs 9 predecessors and interest and acquired his fame 10 and his success with the creation of Batman and 11 it's publication starting in 1939.</p> <p>12 Q. And so earlier I think that you made 13 a reference to Batman being created roughly in 14 1938 is that a reference to Bob Kane's creation 15 of that man, or would you say that Bob Kane 16 created that man in 1938?</p> <p>17 A. I think Bob Kane and Bill 18 Sienkiewicz began the creation of 1938 given 19 what the publication dates are.</p> <p>20 Q. Who is Bill Finger?</p> <p>21 A. When Bob Kane presented the original 22 rough sketch for Batman to the editor what would 23 be DC Comics he didn't have a story behind that. 24 And the editor man Vincent Sullivan, said go out 25 and get a writer to work and Bob was a fellow</p>	<p>1 2 Paul Levitz 3 graduate of the same high school, I think older 4 than Bob, somewhat a professional writer 5 already. He began working as the ghost writer 6 for Bob Kane on the earlier stories, none to the 7 others and the industry from the beginning. 8 Q. Is it your opinion or you would say 9 that Bill or Bob Kane would come together from 10 the Batman in 1938? 11 A. Yes. 12 Q. All right. And what makes the 13 Batman original? 14 MR. WEINBERGER: Objection. 15 A. My view of that as a Bill 16 Sienkiewicz, is that the combination of element 17 visually and from the story standpoint added up 18 to original character. 19 Q. And I have to break them down, are 20 you referring to the distinct and visual 21 features? 22 A. Combination of distinctive and 23 visual and he progressively becomes more 24 original overtime as more and more things are 25 added and are making them more distinguishable</p>

<p>1 2 Paul Levitz 3 affixed amount and in lieu of the full 4 extension. 5 Q. And was there hesitant to provide a 6 full extension that you recall? 7 A. I don't know if I would describe it 8 as hesitance, but it was a negotiated solution 9 from a request from people. The companies sure 10 try and pay less if they can. 11 Q. What was the position of Debra Kane 12 and Elizabeth Kane as to why they deserve more? 13 Objection. 14 A. I was not present for the 15 discussion, but I assume it produced itself to 16 Batman is wonderful, Batman is making you 17 billions of dollars and give us money. 18 Q. On what grounds do they think they 19 deserve money? 20 A. The success of Batman and it being 21 based on Bob Kane's initial idea. 22 Q. Initial idea, or initial creation? 23 A. I don't know if there is a 24 difference between the two. 25 Q. So I'll let you read the letter</p>	<p>1 2 Paul Levitz 3 before we move on. So the first three 4 paragraphs there? 5 A. Okay. 6 Q. You have gotten to the bottom of the 7 page, correct? 8 A. Yes. It's pretty straight forward. 9 Q. So do you have any reason why 10 Deborah Kane's signature isn't on the document? 11 A. Since I haven't seen the document. I 12 have no idea. I know she agreed to the deal. 13 Q. You know that Deborah Kane agreed to 14 the deal? 15 A. Yes, it may have been done encounter 16 parts, or something like that. 17 MR. PARKER: There is another 18 version of this document produced with 19 her signature. I would ask that you 20 produce that. 21 MR. WEINBERGER: If you can go to the 22 next page. There you go. It's already 23 produced. 24 Q. Okay. This is the first time, I'm 25 looking at the paragraph that begins, "that you</p>
<p>1 2 Paul Levitz 3 each knowledge that the Batman property, and 4 I'll copyrights trademarks read the paragraph. 5 You each knowledge that the Batman 6 property, and all copyrights, trademarks, and 7 all other rights therein are owned solely and 8 exclusively by DC. 9 You can further acknowledge that all 10 work rendered by Kane with respect to the Batman 11 property was rendered by DC, or as an employee 12 for DC, pursuant to a written work for hire 13 agreement with DC; and or at the instance and 14 expense and under the supervision and control of 15 DC; and therefore as work made for hire for DC, 16 and that neither of you as the successor or 17 interest to Kane have any copyright interest in 18 the Batman property whatsoever. 19 Is that an accurate reading of that 20 paragraph? 21 A. I think so. 22 Q. And so this is the first time we've 23 seen work for higher language in this agreement. 24 Is there a reason that the work for 25 higher language is included here?</p>	<p>1 2 Paul Levitz 3 MR. WEINBERGER: Objection to the 4 extent it requires the witness to reveal 5 the substance of any attorney-client 6 communication privilege that may have to 7 the extent that he can recall. 8 If you can otherwise answer the 9 question, go ahead. 10 A. Since I didn't participate in the 11 drafting, I assume that it's a different lawyer 12 doing it, and again, trying for belt and 13 suspenders. 14 Q. And so let's look at the next 15 paragraph. 16 Further, if you each agree, that if 17 and to the extent that any of Kane's 18 contributions to Batman's property are deemed 19 not to be works for hire for DC. You 20 acknowledge this is the first time we see a 21 granted all rights from copyrights Kane to DC? 22 MR. WEINBERGER: The same objection. 23 To the extent it requires the witness 24 not to reveal the substance of attorney 25 client communication, to the extent that</p>

<p>1 2 Paul Levitz 3 you can answer the question, go ahead? 4 A. It became conventional at some point 5 that includes just in case deemed to be a work 6 for hire, then you agree to assign everything to 7 us. 8 Q. So you will agree there is no 9 assignment of rights from Bob Kane to -- 10 A. I'm sorry. There was no need for 11 assignment of rights because everything was done 12 at DC's instance and expense. Kane had nothing 13 to assign. 14 Q. Does DC Comics have policy and 15 procedures for accepting proposed materials from 16 freelance writers? 17 A. From time to time DC has had 18 policies and procedures that have varied over 19 the decades. 20 Q. Okay. And it's from 1989 until 21 1993, or '94, was their policies and procedures 22 for freelance writing? 23 A. Generally speaking. 24 Q. What was that policy? 25 A. Generally the procedure was they</p>	<p>1 2 Paul Levitz 3 unsolicited material from people that we don't 4 know or we have not worked with was returned 5 unread. I think that was already a policy by 6 that time. 7 If work was submitted by someone who 8 the edit knew, or had reason to believe, it can 9 make interesting contribution then it might be 10 read and evaluated. 11 Q. Was the policy written down 12 anywhere? 13 A. No, not that I'm aware of. 14 Q. Why not? 15 A. We didn't write down a lot of stuff. 16 Q. Well, why not? 17 A. Lazy. 18 Q. How was the policy communicated? 19 A. I'm sorry, can you repeat that. 20 Q. How was the policy communicated? 21 A. When people become members of the 22 editorial staff they were taught on how to 23 behave as an editor. 24 Q. And how were they taught how to 25 behave? What type of behaviors were they</p>
<p>1 2 Paul Levitz 3 taught? 4 A. That can take the rest of the 5 afternoon. If you're asking specifically -- 6 Q. With respect to unsolicited 7 material, how is there a policy for them to 8 behave? 9 A. There is a pile of stuff that has 10 come in from people please fill out the form 11 letter, thanks for playing our game now go away; 12 that was generally a very curete exercise for a 13 young editorial person. 14 Q. What do you mean by that? 15 A. I mean that there would be a pile of 16 material much of it which was sent in on a very 17 amateurish level; and having to sit there and 18 stuff it into envelops, and feeling guilty that 19 you weren't taking the time to read it, and 20 didn't have the time to spend any time on it, 21 and generally it was a very hard task for young 22 staffers 23 Q. And the authority to review, 24 unsolicited material from people was left to the 25 editor in charge of whatever a particular</p>	<p>1 2 Paul Levitz 3 comment was solicited for; is that accurate? 4 A. Broadly during the period that 5 you're talking about the editor was primarily 6 responsible. 7 If you're talking about specifically 8 Batman, which I've understood that we are 9 focused on here; the decision also might have 10 been restricted to what is in terms of the group 11 editor who was principle responsible for Batman 12 and Danny O'Neil during the period. 13 Q. I'm sorry, who? 14 A. Danny O'Neil. 15 Q. Did the editors have any guideline 16 at DC Comics for the content as to what would be 17 acceptable, and what would not be acceptable for 18 publications? 19 A. Many guidelines relevant to that. 20 It varied with the different property, or the 21 character. 22 Q. And let's stick with Batman. 23 And so I guess that we are talking 24 about 1990, and it's my understanding that 25 Archie Goodwin was an editor at that time; is</p>

1
2 Paul Levitz
3 that accurate?
4 A. Yes, he was mentioned in one of the
5 titles.
6 Q. What was Archie's position?
7 A. Archie was, at that time, probably
8 was listed as a group editor. He was one of the
9 most senior editorial group staffed editors that
10 we've had; extraordinarily talented and experienced
11 editor and writer.
12 Q. So Archie had a set of guidelines
13 that you've followed in terms of the content
14 that you are looking for?
15 Or did he kind of trust them to
16 determine what should be published and what
17 should not be published?
18 A. It's a broad guidelines that is
19 applicable to all of the editors working on
20 superhero material that Archie would have fallen
21 under.
22 Beyond that the more specific stuff
23 would've been more stylistically up to him and
24 additionally, provided some guidelines that we
25 were attended to.

1
2 Paul Levitz
3 editors of what they intend to do.
4 And they would say yes or no, and
5 why don't you try and go back and forth,
6 whatever the case maybe.
7 It was a little different with
8 Archie, who was editing a title called Legends
9 of the Dark Night, which it did not have a
10 single writer on a regular basis. And then I
11 would assume, that the writer would come in and
12 say I would come in and say have an art for
13 legends, and we'll talk about it a little at
14 length for what we had in mind.
15 And then it's possible that they
16 have a two or three paragraph written of what
17 their thoughts were what they might share with
18 Archie, and Archie would say that is great, and
19 here is a contract and go and do it or no, I'm
20 not interested in that.
21 Q. Does the same process for the pencil
22 or inker, or someone doing graphic material
23 verse written materials?
24 A. No, there is no submission process
25 for that.

1
2 Paul Levitz
3 Q. And part of the guidelines how does
4 that work? I assume this is a physical document
5 that the group editors and the editors have
6 access too?
7 A. No, written documents.
8 Q. Or was it communicated to the
9 different writers?
10 A. No.
11 Q. Sir, can you describe for me the
12 process by which freelance writers submitted
13 work for publication to DC Comics specifically
14 Batman stories during this time frame from 1989
15 until 1983?
16 MR. WEINBERGER: Objection.
17 A. There is no process for them to
18 submit work, that is now the process of how
19 freelance writers work. If you look at the
20 Batman books in specific, there were probably
21 three Batman titles being published in any given
22 month; and the specific writer would be assigned
23 to them usually in a year or multi year in a
24 period of time, and that writer would have a
25 conversation with the editors or the subsidiary

1
2 Paul Levitz
3 Q. What do you mean?
4 A. That is assignment. You have a
5 script, who is going to do it. It's not
6 somebody comes up and say I like to do four
7 issues of the Dark Knight as a penciller or an
8 issues of Batman, the editor assigns the work.
9 Q. How it worked by the writer
10 submitted at that time and I know that you
11 talked about it together, were they always in
12 the same room, or was it sometimes submitted by
13 mail?
14 A. The vast majority of time in those
15 years it was in person, probably with some of
16 the writers who is more geographically distance
17 in the phone conversation, if you're talking
18 about the initial plot ideas.
19 Q. Are you aware of Archie Goodwin keep
20 the non-soliciting material from a freelance
21 writer?
22 A. For legends of the Dark Knight?
23 Q. Yes?
24 A. No.
25 Q. For any other publication?

EXHIBIT B

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Case No. 22-cv-08969 (PAE)

CHRISTOPHER WOZNIAK

Plaintiff

VS.

WARNER BROS. ENTERTAINMENT, INC.

Defendant

DC COMICS

Third-Party Plaintiff

VS.

CHRISTOPHER WOZNIAK

Third-Party Defendant

Videoconference Deposition of CHUCK DIXON,
taken on behalf of the Third-Party Defendant,
through counsel, September 1st, 2023, at 9:52 a.m.,
before Nadine M. Castonguay, a Court Reporter.

Page 2

1 APPEARANCES:

2

3 FOR THE THIRD-PARTY PLAINTIFF:

4 LAW OFFICE OF R. TERRY PARKER

5 43 West 43rd Street, Ste. 275

6 New York, New York 100036-7424

7 BY: R. Terry Parker, Esq.

8

9

10

11 FOR THE THIRD-PARTY DEFENDANT:

12 Fross Zelnick Lehrman & Zissu P.C.

13 151 West 42nd Street, 17th Floor

14 New York, New York 10036

15 BY: James D. Weinberger, Esq.

16

17

18

19 - - -

20

21

22

23

24

25

Page 3

1	TABLE OF CONTENTS	
2		
3		Page
4	EXAMINATION/WITNESS	
5	CHUCK DIXON	
6		
7	By Mr. Parker:	4
8	By Mr. Weinberger:	24
9		
10	Defendant's Exhibits:	
11		
12	Exhibit 1 Third-Party Complaint	20
13		
14		
15		
16		
17	(Exhibits retained by Mr. Parker.)	
18		
19		
20		
21		
22		
23		
24		
25		

Page 6

1 pending, we can take a break. So just let
2 us know whenever you need a break. I don't
3 anticipate us going on for very long today.
4 But if you do want a break, let us know.

5 A. Okay.

6 Q. Finally, this is a very informal
7 session. But I want you to remember that
8 you're here under oath and you're
9 testifying just as if we were in a court
10 of law. And we expect you to tell the
11 truth to the best of your ability. Okay?

12 A. Yes.

13 Q. All right. So let's get started
14 I guess with a little background
15 information.

16 I understand you used to be
17 a freelance contributor to DC Comics.
18 Is that accurate?

19 A. Yes, it is.

20 Q. When was that? When were you a
21 freelance contributor to DC Comics?

22 A. Roughly, 1991 to 2002.

23 Q. What does that mean when we say
24 you were a freelance contributor for
25 DC Comics?

1 A. Well, I was not a company
2 employee. Basically you would be assigned
3 jobs and paid by the page.

4 Q. Okay. And when were you paid,
5 after or before work was done?

6 A. Always paid after.

7 Q. All right. And how did you get
8 your start at DC Comics?

9 A. Danny O'Neil, who was the Batman
10 group editor at the time, reached out to
11 me. I had been working for several other
12 companies at the same time. He reached out
13 to me to write a miniseries featuring
14 Robin, Batman's sidekick.

15 I did it, it was successful
16 and from there I basically worked on a
17 number of Batman titles over the course of
18 the next 11 years.

19 Q. Okay. Can you name some of those
20 for us?

21 A. Detective Comics, Night Wing.
22 I did a hundred issues over Robin monthly.
23 I worked on Cat Woman, Green Arrow,
24 Green Lantern. I did some work on
25 The Flash, a little bit of Super Man.

Page 8

1 Birds Of Prey, a title created by me and
2 Jordan Gorfinkel, a number of others.

3 Q. So at your, during that time the
4 group editor was always Danny O'Neil?

5 A. It was Danny O'Neil I think until
6 1999, when he retired.

7 Q. Did you work with any other
8 editors while you were a freelance
9 contributor to DC Comics during those
10 years?

11 A. I worked with almost every editor
12 there. Mike McEveny, Joe Elich, Scott
13 Peterson, Dara Venchenzo, Jordan Gorfinkel.
14 Kevin Duely, Chris Duffey.

15 I mean, the list goes on and
16 on. Following Denny -- Oh, man. The name
17 is slipping my mind of who the group editor
18 was.

19 Q. Did you ever submit unsolicited
20 materials to DC Comics for their
21 consideration in the hope that they would
22 publish the work that you created?

23 A. All the time. We were always
24 pitching specials, mini series. Like I
25 say, Jordan Gorfinkel and I pitched Birds

1 of Prey which became a title on its own.

2 Q. And with respect to the Batman
3 comic, did you ever use Batman characters
4 in these unsolicited submissions to
5 DC Comics?

6 A. Absolutely. I was inside the
7 Batman circle, so I pretty much had free
8 reign to do whatever I wanted to do with
9 any of those characters, within the
10 restrictions the editors gave.

11 But, yes. I mean, I use
12 Batman characters in all of my titles.

13 Q. When you said you were in the
14 inner circle, was there sort of written
15 permission provided to you to use Batman
16 characters in your unsolicited materials?

17 A. No, no. There's nothing like
18 that. You just wanted to make certain that
19 your use of the character fit within
20 continuity.

21 A lot of times you were told
22 you can't use that character because
23 they're on another planet currently or
24 they're dead or whatever reason. There
25 was nothing written. It was all creative

Page 10

1 continuity conflicts that you had to work
2 out.

3 Q. Was this permission that you
4 understood that you had? If it wasn't
5 provided in writing, was it ever provided
6 orally to you?

7 A. Permission to use the characters?

8 Q. Yes.

9 A. Yes. I mean, you would just
10 check to make sure, Can I use this
11 character.

12 Like I say, the only real
13 restrictions were continuity. It wasn't
14 like this character is forbidden, nobody
15 could write it. You didn't want to
16 conflict with what another writer was doing
17 on another title.

18 Q. Right. Okay.

19 Did you -- were you ever in
20 a situation where you submitted material
21 and you were told that you were in jeopardy
22 of being sued by DC Comics because you had
23 used their copyrighted material in your
24 unsolicited submission?

25 A. No, nothing like that ever

1 happened.

2 Q. Were you aware of that ever
3 happening to other freelance contributors?

4 A. I had never heard of that
5 happening.

6 Q. Okay. Was it your understanding
7 that each editor was at liberty to consider
8 unsolicited materials from freelance
9 contributors?

10 A. Yeah. I mean, you can walk in
11 off the street and pitch something.

12 Q. Did that ever happen?

13 A. Oh, yeah. It happened all the
14 time. I never pitched for Batman because I
15 never thought I'd ever get it. That was
16 the dream assignment in comics.

17 But, yes. I pitched lots of
18 other things. I was always at DC, throwing
19 ideas at them before they hired me and
20 after they hired me.

21 Q. How did you throw ideas at them?

22 A. You might show up with like a
23 pitch piece, like a treatment, like a four
24 or five-page thing. Or you might just
25 pitch it verbally in their office; what if

Page 12

1 this happened what if we did this. Just
2 simple you know, very casual atmosphere.

3 Q. When you did a pitch piece, would
4 you write down sort of the idea of the
5 story? Was there text you work from when
6 you did a pitch piece?

7 A. No. You just sort of wrote a
8 general summary of what the story would be
9 about and how many issues you think it
10 would take to tell.

11 Q. And would you use -- would you
12 use a DC character in that pitch piece?

13 A. Absolutely. If you were pitching
14 to DC, there's DC characters.

15 Q. Okay. All right. And when you
16 didn't a pitch piece, you submitted it to
17 an editor. What was the next step?

18 A. You'd wait till they read it.
19 Sometimes they'd read it right there in
20 front of you, if you handed it to them in
21 person.

22 Generally, I would email.
23 Back in the day, fax pitches. And you just
24 wait to hear back. It would either be yes
25 or no, or let's talk about it, or maybe we

Page 13

1 can use this later, or maybe if you, if it
2 was four issues instead of six, all those
3 kind of considerations.

4 Q. But it was your understanding
5 that you had permission to use DC
6 characters in your pitch pieces, correct?

7 A. Yes. They were wide open ideas,
8 they would sometimes say, you know, could
9 you pitch this character, we're looking for
10 something for this character or that
11 character a lot of times.

12 The structure at DC was that
13 all of the characters were broken up and
14 controlled by different editors. So you
15 had to find out which editor was
16 controlling the character you were
17 interested in. And just simply pitch to
18 them either verbally or in print.

19 Q. Okay. Were you aware of any
20 other freelance writers pitching to editors
21 of DC Comics material that incorporated
22 DC Comics characters, and specifically
23 Batman characters?

24 A. Everybody was pitching all the
25 time. Like I said, everybody pitched

Page 14

1 Batman, because you want to get on to
2 Batman. It was the title to work on.

3 So, you know, I visit DC and
4 there'd always be a half dozen other
5 freelancers there and they were there to
6 pitch.

7 Q. When you say everyone in these
8 other freelancers, are you referring to
9 people that are in the inner circle, or are
10 you referring to people who are not in the
11 inner Batman circle that?

12 A. Well, in the DC offices it was
13 generally people who were already working
14 for DC. But, you know, lots of times I saw
15 freelancers pitching at conventions. Come
16 to a DC booth and say, Hey, I have an idea.

17 Q. Okay. When you say "people,"
18 when you refer to people in the office that
19 were already working on things, what do you
20 mean by that?

21 A. Well, these were people that they
22 had monthly books. They had monthly
23 assignments. Generally it was like
24 Wednesdays. The freelancers would show up.
25 It would be freelancer day at DC. You'd go

Page 15

1 and your editor would take you to lunch.

2 So you get a free lunch and
3 you get to pitch ideas. And it was,
4 you know, it was usually the usual
5 suspects. It was guys who already had
6 assignments with the company. But
7 sometimes not.

8 And sometimes -- I mean,
9 once, I even brought along a friend of mine
10 who was a newspaper reporter and he pitched
11 an idea. I just brought him along as a
12 guest.

13 Q. And just to clarify, when you
14 were referring to pitching ideas are you
15 referring to just ideas for stories or did
16 you ever witness people pitching, providing
17 art work as opposed to literary work but
18 visual work.

19 A. Oh, yeah. A lot of times when
20 you pitched, you have what you call
21 pitch piece. It would be a piece of
22 artwork.

23 Because every time I
24 pitched, I had an artist in mind, and I
25 would talk to them beforehand. And we

1 would have art prepared to go along with
2 the piece. So, basically, pitch as
3 a team. Not all the time.

4 Sometimes I just pitched as
5 a writer, but sometimes I pitched as part
6 of the writer artist team.

7 Q. And when you're doing these
8 pitches and when they involve a text, can
9 you describe how long the text was?

10 A. Well, it was generally as long as
11 you needed to tell the story to sell it.
12 You had to sell it and tell it. Some
13 pitches were short, particularly if they
14 were high concepts.

20 Q. In order to sell and tell the
21 story, what kind of specific description
22 might you include in your pitch piece?

23 A. Well, you start with the general
24 overall concept of the story. Why is this
25 story different from all the other stories,

1 that have been done with this particular
2 character? And then the direction you want
3 to take it in, and you would simply tell
4 the story beat by beat, including all of
5 the characters involved and everything
6 else.

7 So basically you're giving
8 them the beginning, middle and end of the
9 story, so they understand why this is a
10 different kind of story, why they might
11 want to buy it. Why it's right for the
12 character.

13 Q. And when you refer to this sort
14 of phrase beat by beat, what do you mean
15 there?

16 A. It's like each story scene.
17 Story begins here, goes there, introduce
18 your first major conflict, your twist, your
19 turns, your reveals and your big
20 conclusion.

21 Q. And was it your understanding
22 that you, that some of the Batman
23 characters you used in these pitches were
24 owned by DC Comics?

25 A. Yes. DC owned everything. You

Page 18

1 were playing in their sand box, but they
2 owned the sand box.

3 Q. Right. But it was your
4 understanding you had permission to use the
5 characters in your pitches, correct?

6 A. Not only permission, you were
7 encouraged. They didn't want to hear
8 about -- they didn't want you pitching
9 somebody else's characters. They want the
10 stories to be specific to these characters.

11 So you had to use those
12 characters in the pitch, or otherwise
13 there's no sense in pitching it.

14 Q. Okay. And Mr. Dixon, I have
15 looked at your resume and you've got quite
16 a fan page on the internet, fan presence on
17 the internet.

18 So I would say that you were
19 probably very, very welcomed by DC Comics
20 to pitch material. And so I can understand
21 why you would make this commission and
22 encouragement and apply it to you.

23 Do you think it applied, or
24 was it your impression that this
25 permission, and encouragement applied to

Page 19

1 other freelance writers who didn't have
2 your --

3 MR. WEINBERGER: Objection.

4 BY MR. PARKER:

5 Q. You can answer the question,
6 Mr. Dixon.

7 A. Okay, yeah. I mean, I didn't
8 have special permission to do this.
9 Anybody could.

10 If you had a good idea for
11 Batman, Superman, Green Lantern or
12 whatever, you could be a total stranger.
13 You can come in off the street and they
14 would be willing to listen, as long as it's
15 a good idea.

16 Q. And when you were working as a
17 freelance contributor to DC Comics during
18 the early 90s, did you know Christopher
19 Wozniak at that time?

20 A. Yeah. I ran across him a couple
21 of times. I can't remember where or when,
22 but I knew who he was.

23 Q. Did you know him to be a
24 freelance contributor at the time to
25 DC Comics?